

STATEMENT OF DIANE K. STEED, DEPUTY ADMINISTRATOR, NATIONAL
HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON COURTS, SENATE
COMMITTEE ON THE JUDICIARY, DEALING WITH THE PROBLEM OF
THE DRINKING DRIVER IN THE UNITED STATES, NOVEMBER 6, 1981

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before your Subcommittee today to address the problem of the drinking driver in this country. Accompanying me today are Mr. Charles Livingston, our Associate Administrator for Traffic Safety Programs as well as Mr. John Moulden and Mr. George Brandt of his staff. Under the terms of the Highway Safety Act of 1966, the National Highway Traffic Safety Administration (NHTSA), helps the States improve their highway safety programs and reduce the number of traffic accidents, deaths and injuries. NHTSA carries out that responsibility through a State grant program in highway safety under Section 402 of the Act as well as through a highway safety research program under Section 403 of the Act. NHTSA is the principal Federal agency working with the States to attack the drinking driver problem in this Nation.

Extent of the Drinking Driver Problem

Drinking drivers cause one of the Nation's most serious health problems. Many have classified it as an epidemic. The fatality statistics are shocking. Over the past 10 years the number of persons killed on our highways in motor vehicle accidents involving alcohol has averaged 25,000 per year. In 1979, over 650,000 people were injured in accidents involving alcohol.

A recent study of alcohol and health problems by the Department of Health and Human Services estimated that the economic cost of alcohol-related motor vehicle accidents in 1975 exceeded \$5 billion. These deaths and injuries are a direct result of the large numbers of people who are driving drunk on the Nation's roads, particularly at night. According to a study conducted by the University of the Pacific for the Stockton, California Police Department, one out of every 10 drivers in Stockton on Friday and Saturday nights is legally drunk, i.e., their blood-alcohol concentration (BAC) level exceeds 0.10 percent.

Why are so many drinking drivers on the roads? One reason is that drinking drivers do not believe that they will be caught. Statistics show that their belief is well founded. NHTSA estimates that the chances of a drinking driver being stopped are between one in five hundred and one in two thousand. Nationwide, police officers average fewer than five drinking driver arrests per officer per year. In addition, drivers assume that if they are caught, they will not be convicted of an alcohol-related offense. Further, they believe that if they are convicted, the sentence will be light. Again, studies confirm this. The State of Maine's Bureau of Highway Safety issued a report in January 1981 on enforcement of its drinking driver laws. With respect to its law mandating jail for drivers convicted for the second time of driving drunk, it found that only one out of every 10 drivers arrested for and convicted of a second offense was actually jailed.

How is this possible? How can the drinking driver be treated so lightly in view of the fatality and injury statistics? I think it can be fairly stated that the public has only recently come to consider alcoholism a serious health condition. They still do not consider driving under the influence of alcohol a serious crime. A drinking driver was not considered responsible for his actions, even if his actions resulted in a death or serious injury. Therefore, he was not held accountable and the general wisdom has held that the driver should not be severely punished. Statistics on penalties meted out to drinking drivers involved in accidents resulting in the death of another attest to the strength of this attitude. A NHTSA study of drivers convicted of vehicular homicide in which alcohol was involved in Michigan, revealed many prosecution and court inadequacies. Although one driver in four could have been charged with either manslaughter or negligent homicide as a result of fatal crash involvement, only about one out of every 12 was actually charged. Furthermore, within the small group actually charged with manslaughter or negligent homicide, only one in four was convicted on the original charge. Eighteen percent of the drivers charged were cleared of the manslaughter or negligent homicide.

Today, however, there are signs that a shift is occurring in the general public's attitude toward the drinking driver. Local citizens are organizing to force State and local authorities to expand their efforts to fight the drinking driver. In

Maryland, an organization known as Mothers Against Drunk Driving (MADD) was instrumental in persuading Governor Hughes to organize a State task force on the issue. Grass-root organizations have also been responsible for the establishment of State task forces in New York, California, Pennsylvania and West Virginia.

With the emergence of the drinking driver as a more visible issue, I believe that this is a good time for the Subcommittee to hold a hearing on the issue. This hearing will focus national attention on the problem and possibly catalyze more grass-roots action. Recognition of the problem will not solve it. Once greater public concern is manifest, however, the State legislatures, public officials and agencies will have a mandate and, thus, a greater resolve to establish and maintain more effective programs to deter those who drink to excess and drive.

NHTSA Efforts

Since the passage of the Highway Safety Act, NHTSA has worked to survey the magnitude of the drinking driver problem, devise solutions, and test them in cooperation with State, county and city governments. Our most important effort has been a series of demonstration projects run in 35 communities across the country between 1970 and 1976. Known as Alcohol Safety Action Projects (ASAPs), these projects were designed to discover what could be done at the local community level to increase the effectiveness of drinking driver programs. Much of what I say today is based on our evaluation of the ASAPs.

Paralysis of the Judicial System

The drinking driver is a national problem, yet it can only be solved at the State and local level. State and local laws govern in this area and State and local courts are the only forum for these cases. Unfortunately, despite the thousands of highway deaths and injuries attributable to alcohol, State and local officials have not focused sufficiently on this problem.

The crux of the drinking driver problem in most States is not the lack of adequate laws on the drinking driver but the lack of consistent, convincing enforcement of those laws by State and local officials. The risk of punishment is low, and the deterrent effect of the laws is therefore weak.

As presently constituted, most State judicial systems cannot handle drinking driver cases in a swift, certain manner that indicates to the general motoring public that it is a serious offense. Although drinking driver cases form a large percentage of lower court dockets, most States have not coordinated the actions of the police, prosecutors, judges, licensing officials and health officials to improve the processing of these cases. Independent action at any one level of the system may only aggravate the problems at another level.

Arrest Level

At the enforcement level, the police are reluctant to arrest drinking drivers because the arrest procedures on that charge are more cumbersome and time-consuming than for any other traffic

offense. It can take as long as 4 hours for an officer to process a driver arrested on a drinking driver charge. He may then spend additional time in subsequent court appearances. Moreover, police chiefs traditionally have not made the arrest of drinking drivers a high priority. They would rather have their men invest their time in patrolling for major criminal activity. When the police do initiate a crackdown and increase the number of arrests of drinking drivers, they often discover that the courts are unable to handle the increased case load. To manage the increased case load, prosecutors plea-bargain with defendants to reduce the charge to a nonalcoholic one or dismiss their cases entirely. As a consequence, the conviction rate plummets, the morale of the police falls proportionately, and the crackdown comes to an end.

Trial Level

The courts are often reluctant to convict on the drinking driver charge. In many instances, judges consider the penalties established by the State legislature for this offense (mandatory jail sentences, license revocation) too harsh. Apart from the defendants' problems with alcohol, they appear to be normal law-abiding people, for whom harsh sanctions seem inappropriate. Legislative action to set harsher penalties may well result in fewer convictions and a less effective program. In our survey of local court actions in those States with mandatory jail penalties, we were repeatedly struck by the degree to which the courts did not impose jail terms in cases calling for them. We

found that the judges commonly allowed plea bargaining the charge to a lesser, nonalcoholic offense to permit themselves the discretion to fashion their own remedies in lieu of the "mandatory" penalties.

The courts also find the drinking driver cases are very time-consuming. When the penalties are increased the demands for jury trials also increase. Jury trials take more time and further clog the system. Judges become very amenable to case processing short cuts, such as plea bargaining, to reduce their docket load.

Given large caseloads the reluctance of judges to convict drivers when severe penalties are mandated and the time-consuming nature of a standard trial for the offense, some States have sought to use non-traditional methods to deal with those arrested the first time as drinking drivers. The availability of a less severe penalty and an array of possible sanctions combinations such as fines and treatment or education encourages some judges to find more drivers guilty of the offense charged. Twenty-eight States screen those arrested and allow the judges to refer those drivers to alcohol violator schools or rehabilitation programs. Arrests under the Statewide Virginia Alcohol Safety Action Program (VASAP) have increased considerably in the past years from 28,578 in 1977 to 38,472 in 1980. Minnesota has instituted an administrative procedure to process, very rapidly, drinking drivers based on the results of the standard blood test given those arrested. Any driver found to register a blood-alcohol concentration (BAC) level above 0.10 percent has his license

automatically suspended for 90 days regardless of his case's subsequent disposition. A high BAC level is sufficient in itself to prove the offense, without the need for evidence as to the defendant's impaired behavior. A driver refusing to take the BAC test has his license administratively suspended for 180 days. The Minnesota system raises the probability of swift and certain sanctions.

Another organizational problem hampers judicial effectiveness. Drinking driver cases are heard, as are all traffic cases, at the lower court level. At that level, a high turnover rate for judges exists. Novice judges often do not have the experience to deal with the legal and procedural complexities of a trial for drinking drivers. To provide them with a quick education on the subject, NHTSA has devised a special training course. The course was pilot-tested in Tampa, Florida in December 1980 before 49 judges under the auspices of the Florida State judicial education office. The course gives judges information on the procedural and constitutional issues most frequently raised by defense counsel in traffic cases with emphasis on those issues in drinking driver cases. It also shows judges the diversity of penalties they can impose depending on the circumstances of the particular defendant. At present, 22 States have shown interest in including the package in their judicial education programs.

Due to plea bargaining and dismissals, many persons originally charged as drinking drivers are not convicted on the charge. Without a conviction, no record exists. If arrested

again on the charge, the person would be considered a first-time offender. All States currently have laws requiring courts to report all convictions to a central driver record repository. Yet, even when the court convicts it is not uncommon to find that it neglects to send a record of the conviction to the central repository. Further, local courts often do not request driving records on defendants from the State motor vehicle department. Judges may be reluctant to order records because of the cumbersome, time-consuming access procedures required to obtain the records. As a result of these problems, local prosecutors and courts are unable to identify multiple drinking driver offenders and consequently fail to prosecute, convict and impose the harsher sanction such defendants deserve. Ideally, the States should strive to develop a Statewide driver record system to which courts will report drinking driver convictions and from which the courts can readily obtain conviction reports. To go one step further, cases which are plea bargained should be recorded as being alcohol-related. This is now being done in Virginia.

Based on our ASAP experience, we have found that in addition to having an accurate record of prior convictions, the courts must also know the nature of a driver's alcoholic problem. With this knowledge, the courts can fashion the penalty that is best calculated to deter the defendant from driving drunk in the future. While a social drinker can be humiliated by the typical penalties imposed on the drinking driver and may be deterred, an

alcoholic cannot help himself. He requires more extensive attention which may include Alcoholics Anonymous, group therapy, individual counseling and probation. NHTSA has developed a course to train court caseworkers and probation officers to perform presentence investigations to screen defendants to determine the level of their alcohol problems. This course has been presented

in New York, Virginia, Pennsylvania and Texas. Courts in Pennsylvania currently conduct the presentence screening through the use of a Statewide computer system known as the Court Reporting Networker (CRN). The central data bank consolidates all existing traffic records on a defendant and also evaluates the extent of his alcohol problem. The CRN system standardizes presentence investigations and makes them less costly and time-consuming. With such a system, prosecutors and judges are more likely to order presentence investigations.

Punishment Level

Most States have legislated fines and stiff license sanctions (suspensions or revocations) as penalties for the drinking driver. Some States prescribe a minimum jail term. This agency has been instrumental in getting the States to use education or treatment as an additional sanction for those convicted. As I explained beforehand, many judges are reluctant to impose the stiff punishment of license suspension or jail. Also, due to the time-consuming nature of the process, a penalty is not imposed until

many months after arrest. By losing its immediacy, the penalty may become, in the mind of convicted drivers, society's unjust intrusion into their lives and a threat to their livelihood. This produces resentment rather than contrition.

Despite the difficulties in achieving convictions and imposing license sanctions, studies have found license suspension or revocation to be more effective in deterring future violations than either fines or jail. A study in California showed that drivers whose licenses were revoked either did not drive, or drove more cautiously and were less likely to drive during those times when the probability of accidents is higher. As I mentioned earlier, Minnesota, in an effort to shorten the time between arrest and punishment, has initiated an automatic license suspension system for drivers found with a BAC level above 0.10 percent. This is in the right direction for the first offense. If the change can also be processed administratively, the court or administrative agency presiding over the case may be more willing and able to speed the case along and impose the legal penalty.

The Solution: A Coordinated Program

Despite the appalling statistics and the apparent continued inability of the criminal justice system to treat drinking and driving as a serious offense, Federal State and local officials are not indifferent to this problem. As we all know, for decades, Federal, State, and local governments have attempted to combat the drinking driver with projects and programs. Based on our evaluation of our ASAP projects, I want to make the following general recommendations.

The goal of any State drinking driver program should be to increase the perceived risk of arrest, conviction and punishment among this group. To accomplish this, arrest and adjudication must be swift and sure. The bottlenecks in the enforcement and adjudication system must be eliminated. Therefore, a number of procedural actions must be taken simultaneously to prepare the police, judges, the prosecutors, probation officers, correction officials and health officers for the resultant surge in the number of arrests, trials, and convictions. State and local officials must not only increase arrests, they must also shorten booking time, shorten trial time, raise the conviction rate on the original charge, assure appropriate punishment for those convicted, keep a record of the conviction that is easily accessible to courts in case of future arrests on the same charge, and conduct a public information and education campaign. These procedural efforts will broadcast to the public the high priority that all elements of the legal community accord a drinking driver arrest and their common resolve to punish it swiftly.

To achieve these changes, we believe that a program intended to deter the drinking driver must embrace the following elements. It must: 1) aim to deter the majority of drinking drivers who are never arrested; 2) generate citizen support to provide a political base for increased enforcement; 3) place responsibility for management in the hands of local officials; 4) coordinate all levels of enforcement adjudication and sanctioning so that the case processing system works quickly and self-sufficiency by

using fines, court costs and treatment fees to defray the costs of the program; 6) use education programs to change general public attitudes on drinking and driving. NHTSA intends to work with a few States to develop a comprehensive, coordinated alcohol-safety program based on these six elements. We hope that these efforts will provide enough practical information so that other States will be encouraged to establish their own programs.

A good starting point for any State would be a State task force study of the drinking driver problem. In response to the rise of citizen activist groups such as MADD, RID (Remove Intoxicated Drivers), and PARK-IT and political pressure over the drinking driving problem, a number of States in recent years have established drinking driving task forces. Task forces have been established in New York, California, Maryland, Pennsylvania, and West Virginia.

The results of these task forces have been impressive. New York has improved its drinking driver laws and now sends fines back to the local jurisdictions to establish comprehensive, locally managed alcohol-safety programs. Maryland has enacted a preliminary breath-testing law, which allows police to test the blood-alcohol level of those arrested in order to establish probable cause to arrest. California has enacted an illegal per se BAC law and new minimum penalties. It is also presently holding legislative hearings on a proposed 5 cent per bottle liquor tax as a means of financing comprehensive alcohol-safety programs.

An effective local drinking driver program places greater demands on the police, the prosecutors, the courts, licensing

agencies and the health/education agencies. A successful campaign drains money from the municipal treasury. To meet the demands of a program, new sources of funding may be needed, such as the fines collected in the campaign. Many local governments, however, cannot retain fines collected from convicted drinking drivers. They must forward them to the State treasury. One solution to the funding problem is found in a recently adopted New York statute, which redistributes all drinking driver fines back to the counties for their drinking driver programs. Virginia, based on its experience with the Federal ASAP project in Fairfax County in the mid-1970s, also sends money collected from fees back to the counties. Under this approach, the drinking driver, the driver who creates the problem, pays for its solution.

A law making it unlawful per se to drive with a high blood-alcohol level is also a useful component of a coordinated drinking driver program. Nineteen States have enacted illegal per se laws that make a high BAC level in a defendant sufficient proof of intoxication. By reducing the elements of the crime to one item - blood alcohol concentration - this law reduces not-guilty pleas, requests for trials and thus the pressure to plea bargain or to dismiss drinking driver cases. As a result, less police time is spent in court and officers have more incentive to make more drinking driver arrests.

It also stands to reason that publicity of the new State campaigns, particularly the increased vigilance by the police as well as the rise in the number of actual arrests and convictions, will heighten the perceived risk. This proved effective in Great Britain (1964) and New Zealand (1978). It is presently being used effectively by the Maryland State police.

The Federal Role

Under the system of Federalism in this country, the States have retained the responsibility for policing roads to protect the health and safety of their citizens. NHTSA was organized, in part, to help the States more efficiently carry out their responsibility and reduce the number of traffic deaths and injuries. It has traditionally aimed at providing the States with the latest highway safety research, demonstrating results, and serving as a central clearinghouse for the result to State projects or experiments in all areas of highway safety.

Today the States look to NHTSA keep them up-to-date on the latest developments in the drinking driver field. The States want NHTSA to keep them informed on the success or failure of innovative projects in other States. They want to learn from the experience of other States and avoid repeating the mistakes already made by other States. For similar reasons, the States have requested NHTSA assistance to develop the in-house expertise to evaluate the success or failure of their own projects and programs. In an effort to summarize drinking driver techniques that work, NHTSA has prepared a series of manuals and courses

that are in great demand. We are distributing a manual for police on the detection of drinking drivers and a manual for court case-workers to improve case processing and disposition. We have developed the only reliable interview questionnaire for presentence investigation. We have conducted studies to improve a State's reporting systems for traffic conviction. We have developed a model traffic case management system as well as model laws to improve prosecution of the drinking driver. We have co-sponsored a national prosecutors conference on DWI and vehicular homicide. We are also presenting courses to judges and police on efficient processing of those arrested as drinking drivers, and to alcohol-safety program coordinators on how to organize and implement a comprehensive, locally-managed program.

Summary

The drinking driver problem is not insurmountable. We know that needs to be done. The States do not so much need new laws on the problem as a resolve to enforce them and technical assistance to streamline their criminal justice system procedures. NHTSA stands ready to work with the States and provide practical information so that they can set up coordinated and comprehensive drinking driver programs.

The necessary resolve to change current State practices, however, can only be summoned if local citizens show active and vocal interest. Congressional hearings such as this provide a national forum to elicit comments from these people and inspire action by others. The grass-root efforts of citizen groups in

some States have been extremely successful and task forces have been set up. Now is the time for more citizens to convey to their State legislators, police, prosecutors and judges that drinking and driving is a serious offense. The criminal justice system can work if the government institutions that maintain the system receive this clear signal.

This concludes my statement. I would be pleased to answer any questions you might have.

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